UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 18 CR 872 (VM)

LLOYD KIDD,

Defendant.

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New York, N.Y.
July 15, 2019
9:15 a.m.

Before:

HON. VICTOR MARRERO,

District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
MOLLIE BRACEWELL
ELINOR TARLOW
JACOB GUTWILLIG
SAGAR RAVI
Assistant United States Attorneys

ZACHARY MARGULIS-OHNUMA
VICTORIA MEDLEY
Attorneys for Defendant

ALSO PRESENT: USAO Paralegal Specialist Hannah Harney
Defense Paralegal Specialist Sophia Lattanzio
Special Agent Brian G. Gander, FBI

(In open court, jury not present)

THE COURT: Welcome back. We have two items to resolve. One is the request by the members of the jury for the testimony of Kaira Brown. I understanding the parties have agreed upon the redacted version of that, and we will hand to the court security officer two copies of that portion of the instructions to be turned over to the jury according to their request.

The second is Court Exhibit Number 4, the question that the jurors raised concerning the instruction on page 34, which relates to the requirement about acting knowingly. Their question is: Is this requirement limited solely to a finding of advertising, or would it apply for any finding under the first alternative of the first element of Count One, and they say, for example, recruited, enticed, et cetera?

Have the parties discussed this question and endeavored to develop a proposed instruction to answer the question?

MS. BRACEWELL: Yes, your Honor, the parties conferred and we have a jointly-agreeable proposal. We emailed it to your clerk this morning and I could read it into the record.

THE COURT: Please read it into the record.

MS. BRACEWELL: In response to your question regarding Count One, if the only prohibited activity that you find the defendant engaged in is advertising a minor for sexual

activity, you must find the defendant actually knew that the victim was under 18 years of age. If, however, instead of or in addition to advertising you find beyond a reasonable doubt that the defendant recruited, enticed, harbored, transported, provided, obtained, maintained, patronized or solicited the victim, then you must find that the defendant did so, either (1) knowing that the victim was under the age of 18, (2) in reckless disregard of the fact that the victim was under the age of 18, or (3) having had a reasonable opportunity to observe the victim who was under the age of 18 at the time of the alleged conduct.

THE COURT: Thank you. Mr. Margulis-Ohnuma, would you confirm that that explanation is acceptable to the defendant?

MR. MARGULIS-OHNUMA: Yes, your Honor, that's consistent with our understanding of the law on this point.

THE COURT: Thank you. Ms. Bracewell, would you forward another copy of that agreement or proposal to chambers, at Alina Lindblom's email so we could have it here?

MS. BRACEWELL: Yes, I will right now.

(Pause)

THE COURT: I am informed that the jury is here.

I have read the parties proposed response to the jury's question, Court Exhibit Number 4, and I find it acceptable, so I will read it to them and then give them a clean copy along with the two copies of the testimony of Kaira

Brown.

(Jury present)

THE COURT: Good morning, welcome back. I hope that you all had a restful weekend, not inconvenienced or interrupted by the blackout.

So let's turn to the two items that we left open as of last Friday. You asked for copies of Kaira Brown's testimony. We have obtained copies and redacted those portions that are not relevant or that contain material that is beyond the scope of the testimony or matters that I asked be stricken, et cetera. When you go back to the jury room now, the security officer will give you copies of the testimony.

Second, you asked another question concerning the definition of acting knowingly. In response to that question, which pertains to Count One, if the only prohibited activity that you find the defendant engaged in is advertising a minor for sexual activity, you must find that the defendant actually knew that the victim was under 18 years of age. If, however, instead of or in addition to advertising, you find beyond a reasonable doubt that the defendant recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited the victim, then you must find that the defendant did so either knowing that the victim was under the age of 18, or in reckless disregard of the fact that the victim was under the age of 18, or having had a reasonable

opportunity to observe the victim who was under the age of 18 at the time of the alleged conduct.

I will also give the court security officer a copy of this response so that you have it before you during your deliberations.

Thank you again, and you may now return to the jury room.

(Jury retired to deliberate; time noted, 9:52 a.m.)

(Recess taken)

(Time noted, 12:50 p.m.)

THE COURT: The Court was handed a note from the jury dated July 15, no time given. This is Court Exhibit Number 5, and it reads: Can the Court provide further instruction on what constitutes "a reasonable opportunity to observe" a victim and how that element can be established?

Now I have been just handed a second note just now which will be marked Exhibit Number 6, Court Exhibit 6, which reads: Can we take a "get-some-air break" for 30 minutes?

Is there any objection from any of the parties that the jury take a 30-minute break?

MS. TARLOW: Not from the government.

MR. MARGULIS-OHNUMA: Not from the defense.

THE COURT: All right. Why don't I call them in and say there's no objection to taking a 30-minute take-some-air break, but to caution them not to have any deliberations in the

meantime, and then we can discuss the answer to the question.

Bring the jury in, please.

(Jury present)

THE COURT: The Court received your note earlier today in which you asked: Can the Court provide further instruction on what constitutes "a reasonable opportunity to observe" a victim, and how that element can be established?

We are working on a response and will need a little bit more time to do so. In the meantime, I have also been given your more recent note asking whether you can take a "get-some-air break" for 30 minutes. The answer to the latter is yes, and I hasten to say it was unanimous.

JUROR: As was the request.

THE COURT: So just want to caution you that when you do take such a break, please remember the caution that I have given, do not have any form of deliberation among yourselves or with anyone at the outside or have any contact with anyone involved in the case, and if any of these things occur, please inform me immediately.

Thank you, and have a good break.

(Jury not present)

THE COURT: I have distributed the earlier note, and asked the parties to examine the question and confer to see whether you can develop a jointly-agreed upon response that the Court could consider and determine whether such a response

accurately reflects the law or the relevant considerations.

Does the government have any view on the matter?

MS. TARLOW: Yes, your Honor, we have a proposed response. It's our understanding defense counsel does not agree with the proposed response, but I could read it, if your Honor would like, and explain why this is our proposed response.

THE COURT: All right, you may.

MS. TARLOW: With respect to your consideration of whether the defendant had a "reasonable opportunity to observe the victim," I instruct you to use the ordinary everyday definition of these terms. An opportunity to observe includes but is not limited to a face-to-face interaction.

THE COURT: Okay. Thank you.

Mr. Margulis-Ohnuma, what's your response?

MR. MARGULIS-OHNUMA: I haven't written something out, but our proposal would be something to the effect of a reasonable opportunity to observe is an opportunity sufficient for the observer -- for a reasonable observer to ascertain the age of the person observed.

And if I may, I will give you my rationale for why I think it should be a restrictive definition like that, because we are obviously quite far apart on this.

For one, there's no case law on this. The parties have looked pretty efficiently, and there's no case that

defines what is a reasonable opportunity to observe. My submission would be, given the historical statutory and constitutional background, given that we're writing on a blank slate, that the analysis should be or the definition of a reasonable opportunity to observe should be quite narrow.

And here's why: Number one, there is always a presumption in criminal cases that every prong, every element must carry a mens rea requirement, usually knowing or willful. So what this statute does is creates a very explicit carve out from the normal presumption of a mens rea with respect to knowledge of the victim's age. So right there it should be interpreted narrowly.

Number two, this statute carries a life imprisonment, as the maximum sentence. So given that, the carve out of the normal presumption of mens rea should be even more narrow.

And where I'm getting this from is that the government's cited a case, *U.S. v. Robinson*, I could provide your clerk with the number, but which discusses the approach that we all do agree on, that this is a carve out to the mens rea requirement in the sense that if they prove a reasonable opportunity to observe, they don't have to prove actual knowledge or even reckless disregard for the actual age of the alleged victim. So the *Robinson* case sets forth that framework without defining what is a reasonable opportunity to observe, but in so doing cites the congressional record and the

testimony of the sponsors of the bill. And if I may, and I will read, which I think is pretty illustrative.

So in passing this provision, the reasonable opportunity to observe provision, in 2008, the sponsors of the bill submitted in the congressional record that: Additionally, a special evidentiary provision is added for those cases under Section 1599(a)(1) in which criminal liability attaches not because of the use of coercion but because of the use of a minor for commercial sexual activity. In such cases, the prosecution will be exempted from having to prove beyond a reasonable doubt that a defendant who had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained or maintained, knew that the person had not attained the age of 18. This special evidentiary provision reflects a similar provision in the aggravated sexual abuse offense, 18 US Code 2241(d), and is crafted in light of *United States v. Excitement Video*, 513 U.S. 64, 70, n. 2 (1994) (exception from presumption of mens rea more appropriate in statutes in which a perpetrator necessarily "confronts the underage victim personally and may reasonably be required to ascertain that victim's age.") This approach comports with numerous appellate decisions in related areas of the law such as the Mann Act. And as an example, it cites *United States v. Jones*, 471 F.3d 535 (4th Circuit, 2006).

So what they're saying is that given that this is an

exception to the normal rule requiring a mens rea with respect to every element of a criminal offense, and I'm adding given that there is a life imprisonment provision, it's a narrow exception, and therefore, the jury should be instructed narrowly that "reasonable opportunity" means an opportunity reasonable with respect to what you're trying to ascertain. What you're trying to ascertain is the victim's age, and they should be instructed accordingly.

THE COURT: Ms. Tarlow?

MS. TARLOW: Your Honor, we think that applies to two different ways in which this element can proven. In *Robinson* -- and the cite is 702 F.3d 22, (2d Cir. 2012), in *Robinson* the defendant argued that the district court had erred by instructing the jury that the defendant could be convicted upon a showing that he had a reasonable opportunity to observe the victim.

In that case, the instruction included that there was a face-to-face interaction and that was sufficient. At page 31 of that opinion the court specifically states that the government may prove that a defendant had a reasonable opportunity to view a victim in lieu of proving knowledge. It is strict liability, as is the case in many other statutes with respect to minor victims. And the Second Circuit noted that this is an alternative way to proving mens rea with regard to a defendant's awareness of a victim's age.

Otherwise, to interpret it the way that the defense counsel has, would, as I said, allay the two different ways in which this element can be met, and it would take out the opportunity to view as not a separate strict liability with respect to a minor's age.

So your Honor, just looking at one case, *United States v. Robinson*, which is a Second Circuit case, it very clearly delineates that there are three different ways to prove this element, one of which is a strict liability manner where the defendant must just have a face-to-face interaction and does not need to have specific mens rea or awareness of the victim's age.

THE COURT: Thank you.

MR. MARGULIS-OHNUMA: May I briefly respond?

THE COURT: Yes.

MR. MARGULIS-OHNUMA: It's not any face-to-face interaction, it's a reasonable opportunity to view. So what else does "reasonable" mean if not reasonable enough to determine the question of how old the person is? So a fleeting view wouldn't be enough, it has to be enough to determine how old the person is. That's the key.

The idea is if you're a sex trafficker and you see a girl you can't say: Well, I didn't know, even though she looked like she was 14, well, I didn't know.

Well, if you had a reasonable opportunity to view,

then it doesn't matter whether you knew or not. But if you didn't have an opportunity to view, if you met her online and saw a video that she made where she looks older and it's not enough to ascertain her age, that's not a reasonable opportunity to view. And the case law is silent to that, but I think, given the rule of lenity, given the stakes here of life imprisonment, we need to fill it in as narrow a way as possible.

MS. TARLOW: Your Honor, that is why the government proposed the term "face-to-face interaction." We're not suggesting that meeting someone online, as defense counsel said, would be sufficient to satisfy that requirement.

THE COURT: Let me consider what you've just argued. Let me read the *Robinson* case closely, and we'll reconvene in a reasonable period of time. I'll see you in perhaps another half hour and we'll go from there. Thank you.

MS. TARLOW: Thank you, your Honor.

(Recess taken)

(Time noted, 2:40)

THE COURT: I had an opportunity to examine closely the parties' debate earlier concerning the meaning of the term "reasonable opportunity to observe," and also I read very carefully the Second Circuit's decision in the *Robinson* case as well as the legislative history set forth in the congressional record dealing with the amendments to Section 1591(a)(1), which

added the 1591(c), which is the statute that contains this language referring to reasonable opportunity to observe.

Let me just quote a couple of provisions from *Robinson* that I think inform the Court's examination of the issues. One, on page 31, the court says the better reading of Section 1591(c) is the government may prove the defendant had a reasonable opportunity to view the victim in lieu of proving knowledge.

Page 32, it continues: Viewed in context, the most natural reading of this provision is that proof that the defendant had a reasonable opportunity to observe the victim may substitute for proof that the defendant knew the victim's underage status.

And on page 34, at the conclusion of the discussion of the section, the court summarizes by saying: In a prosecution under Section 1591, the government may satisfy its burden of proof with respect to the defendant's awareness of the victim's age by proving any of the following beyond a reasonable doubt: (1) the defendant knew that the victim was under age 18, (2) the defendant recklessly disregarded the fact that the victim was under 18, or, (3) the victim had a reasonable opportunity to observe the victim.

Now in this case, as I interpret the circuit court's opinion, it expressed concern that the defendant's argument there essentially would have superimposed an additional element

to the mens rea requirement under Section 1591(a), whereas Section 1591(c) states, where the government need not prove the effect of the defendant's interpretation would have been to remove or to undermine the strict liability aspect of the statute.

And that's the way that I see the debate here as between the government's proposal and the defendant's response. What Mr. Margulis-Ohnuma proposes is that the Court in essence consider two levels of analysis of reasonableness. One is the reasonable opportunity to observe, but it's also the reasonableness of the observer, and the extent to which the observer properly may or may not have been able to assess the victim's age.

I think that adding this element of analysis into the observer's reasonableness is in effect doing what the *Robinson* court indicated was not appropriate, which is to add an additional element to the mens rea requirement, and in effect remove the strict liability aspect of the statute. In that light, I would propose reading the instruction proposed by the government with a couple of possible observations, and I invite your reaction to that.

The government suggested that the term is defined in its ordinary everyday meaning and includes but is not limited to a face-to-face interaction. I would suggest that one possibility of elaborating a little bit more on that is to make

clear that it includes but is not limit to, and insert "for example," so it is not an element but an example of what might possibly satisfy the requirement, for example, face-to-face interaction, the means, duration and location of such interaction. That would make it clear that if there is a face-to-face or personal interaction, it would be important to assess how long that interaction occurred, where it occurred, the means by which it occurred, and I think that that would perhaps add a little bit more clarity for the jury in determining the question of what is a reasonable opportunity.

Now I could just read what I have just indicated or I could also give the jury more context by reading from the paragraphs in the Second Circuit opinion that I read to you before. I invite your thoughts on that.

MR. MARGULIS-OHNUMA: Sorry, could you read the full instruction you're proposing? I'm not sure I follow.

THE COURT: There are two possibilities. One is for me to read the Second Circuit language that I gave you as context and then read the instruction of the government's version, which would say the term is defined by its ordinary everyday meaning and includes but is not limited to, for example, face-to-face interaction, the means, duration and location of such interaction, or maybe we say: And the means duration and location of such interaction.

Government?

MS. TARLOW: One moment, your Honor.

THE COURT: Yes.

(Pause)

MS. TARLOW: Your Honor, two points. First, we think that providing portions of the Second Circuit case law in *United States v. Robinson* would provide a context for the instruction your Honor would give, and so we would ask that your Honor provide a description or excerpt from *United States v. Robinson* to place into context.

With respect to the additional language that your Honor has suggested, our only concern is that the way that it is currently phrased is it lists an example, a face-to-face interaction, and then describes certain qualities or characteristics or factors that the jury might consider about that face-to-face interaction, as opposed to providing additional examples. So your Honor, we would have proposed language that might slightly tweak that to reflect that concern.

THE COURT: Right.

MS. TARLOW: Instead it would read -- the first sentence would remain the same, the second sentence would say: You may consider the means, duration, and location of certain face-to-face interactions.

Your Honor, strike that. The second sentence would instead say: You may consider the means, duration and location

in considering whether the defendant had a reasonable opportunity to view a victim. An opportunity to observe a victim includes but is not limited to a face-to-face interaction.

THE COURT: Thank you.

Mr. Margulis-Ohnuma?

MR. MARGULIS-OHNUMA: I guess I'm not persuaded that a face-to-face interaction isn't required. I thought the government had come off of that. The implication of that instruction is that there doesn't have to be a physical face-to-face interaction. I don't think that's right.

In terms of adding the means, duration and location language, I think that's helpful.

THE COURT: All right. Well, remember what I said earlier that I don't read this face-to-face interaction as being an element but an example, and that's why I qualified it by saying limited to, for example, a face-to-face interaction.

So I would not -- I am not persuaded, Mr. Margulis-Ohnuma, that your objection in this case warrants acceptance of your language.

Would the government hand up the proposal that you just read?

MS. TARLOW: Yes, your Honor.

MR. MARGULIS-OHNUMA: And also identify what language from *Robinson* is proposed to be read?

THE COURT: Page 31, the bottom paragraph of the second column, the language says: *Robinson*'s interpretation is mistaken. The text and structure of the statute does not indicate that Section 1591(c) imposes an additional element on top of the mens rea requirement in Section 1591(a). Quite the contrary, 1591(c) states what the government need not prove.

It continues, next paragraph: The better reading of section 1591(c) is that the government may prove that the defendant had a reasonable opportunity to view the victim in lieu of proving knowledge.

Continuing on the next page: Viewed in context, the most natural reading of this provision is that proof that the defendant had a reasonable opportunity to observe the victim may substitute for proof that the defendant knew the victim's underage status.

And then finally, on page 34, last paragraph above B, the government may satisfy its burden of proof with respect to the defendant's awareness of the victim's age by proving any of the following beyond a reasonable doubt: (1) the defendant knew the victim was under 18, (2) the defendant recklessly disregarded the fact that the victim was under 18, or (3) the defendant had a reasonable opportunity to observe the victim.

MR. MARGULIS-OHNUMA: I would object to reading any of that, your Honor. It's not responsive to the question. The initial part is rather confusing for non-lawyers.

I think they focused in on the question and understand that's a prong, they just want to know the content of it, what constitutes a reasonable opportunity to observe. So I would object to anything going beyond that, which I think is captured in the other language but not in the language from *Robinson*.

THE COURT: Thank you.

Ms. Tarlow, any view on that?

MS. TARLOW: Your Honor, we defer to the Court as to whether or not it would be appropriate.

THE COURT: Do you have the language?

MS. TARLOW: Yes, your Honor.

THE COURT: Mr. Margulis, you heard the government's proposal.

MR. MARGULIS-OHNUMA: To be safe, let's read the whole thing one more time.

THE COURT: With respect to your consideration of whether the defendant had a reasonable opportunity to observe a victim, I instruct you to use the ordinary everyday definition of those terms. You may consider the means, duration, and location as factors in determining whether the defendant had a reasonable opportunity to observe the victim. An opportunity to observe the victim includes but is not limited to, for example, a face-to-face interaction between the defendant and the victim.

MR. MARGULIS-OHNUMA: So I think that's clear enough.

I maintain the same objection, that I think it should not include the phrase "but not limited to." I think the language does require a face-to-face or in person interaction, but other than that, I don't object.

THE COURT: I don't see anything in the statute that supports an argument that it requires a face-to-face interaction. In light of the fact there's no consensus as to whether the Court should give the context from *Robinson* as background, I will not include that language in the instruction, but I pointed it out just to indicate to you what I considered persuasive in determining what an appropriate instruction here would be.

MS. TARLOW: Your Honor, just with respect to the final sentence that is proposed to be read to the jury, we would ask that your Honor include -- and I apologize if I did not include it -- a reasonable opportunity, as opposed to just an opportunity.

THE COURT: All right. The court officer, please bring the jury in.

(Jury present)

THE COURT: Apologies for keeping you waiting. In this business when you're dealing with statutes and statutory interpretation, questions, even the simplest ones, such as those you raise, sometimes require the parties to do research, consult, discuss with the Court so the Court can do its own

form of research, drafting, consultation with oracles and other means to arrive at an appropriate answer to your question.

So in that light, let me give you a response to your question with respect to your consideration of whether the defendant had a "reasonable opportunity to observe" a victim. I instruct you to use the ordinary everyday definitions of those terms. You may consider the means, duration, and location as factors in determining whether the defendant had a "reasonable opportunity to observe" the victim. A reasonable opportunity to observe the victim includes, but is not limited to, for example, a face-to-face interaction between the defendant and the victim.

I hope that that is sufficiently helpful, and I now direct you to return to your deliberations. And when you have an idea of your adjournment for the day, if you're going to be adjourning for the day and continue tomorrow, let us know as soon as possible. Thank you.

(Recess taken)

(Time noted, 3:30)

(Jury not present)

THE COURT: The Court received a note dated July 15, 2019, at 3:00 p.m. from the jury marked as Court Exhibit Number 7, and it reads: We are ready to deliver our verdict.

The court security officer, please escort the jury into the jury box.

(Jury present)

THE COURT: The jury has submitted to the Court, through the court security officer, a note which will be marked as Court Exhibit Number 7, stating that the jury is ready to deliver its verdict.

The Court notes for the record that the twelve regular members of the jury impaneled in this action have been returned to the courtroom and are seated in the jury box in their respective places.

The foreperson, please rise.

Has the jury unanimously agreed upon a verdict?

THE FOREPERSON: Yes, we have.

THE COURT: Please hand the verdict to the clerk.

Ladies and gentlemen of the jury, your verdict will now be published, that is, it will be read out loud in open court. Pay close attention when the verdict is published. You may be asked individually whether the verdict as published constitutes your individual verdict in all respects.

The clerk will publish the verdict.

LAW CLERK: Count One, sex trafficking of a minor victim.

Ms. Foreperson, considering the elements of the crime of sex trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the

defendant, Lloyd Kidd, is guilty of committing this crime as charged in Count One of the indictment, knowing or in reckless disregard of the fact that Victim-1, Kaira Brown, had not attained the age of 18 years, or that the defendant had a reasonable opportunity to observe Kaira Brown and Kaira Brown was under 18 at the time?

THE FOREPERSON: Yes.

LAW CLERK: So say you all.

Ms. Foreperson, considering the elements of the crime of sex trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Lloyd Kidd, is guilty of committing this crime as charged in Count One of the indictment, knowing or in reckless disregard of the fact that force, threats of force, fraud, coercion, or a combination of such means would be used to cause Victim-1, Kaira Brown, to engage in a commercial sex act?

THE FOREPERSON: No.

LAW CLERK: So say you all.

Count Two, sex trafficking of a minor victim.

Ms. Foreperson, considering the elements of the crime of sex trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Lloyd Kidd, is guilty of committing this crime as

charged in Count Two of the indictment?

THE FOREPERSON: No.

LAW CLERK: So say you all.

Count Three, sex trafficking of an adult victim.

Ms. Foreperson, considering the elements of the crime of sex trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Lloyd Kidd, is guilty of committing this crime as charged in Count Three of the indictment?

THE FOREPERSON: No.

LAW CLERK: So say you all.

Count Four, sex trafficking of a minor victim.

Ms. Foreperson, considering the elements of the crime of sex trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt --

MR. MARGULIS-OHNUMA: Your Honor, I apologize the clerk I think misread Count Four.

LAW CLERK: My apologies.

THE COURT: Why don't you pick up the verdict form from the jury foreperson and read the count as it appears.

LAW CLERK: Count Four, sex trafficking of an adult victim.

Considering the elements of the crime of sex

trafficking, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Lloyd Kidd, is guilty of committing this crime as charged in Count Four of the indictment?

THE FOREPERSON: No.

LAW CLERK: So say you all.

Count Five, production of child pornography.

Ms. Foreperson, considering the elements of the crime of using a minor to produce child pornography, as such elements are described in the Court's instructions, do you unanimously find that the government has proved beyond a reasonable doubt that the defendant, Lloyd Kidd, is guilty of committing this crime as charged in Count Five of the indictment?

THE FOREPERSON: Yes.

LAW CLERK: So say you all.

THE COURT: Does either party request that the jury be polled?

MR. MARGULIS-OHNUMA: Yes, your Honor, we do request that.

THE COURT: All right. The clerk will pick up the verdict form and poll the jury.

LAW CLERK: When I call your name, please indicate whether the verdict as published constitutes your individual verdict. You may answer yes or no.

One, Susan Herzog.

THE FOREPERSON: Yes.

LAW CLERK: Two, David Ingles.

JUROR: Yes.

LAW CLERK: Three, Joseph Vinciguerra.

JUROR: Yes.

LAW CLERK: Four, Jeffrey Black.

JUROR: Yes.

LAW CLERK: Five, Tiffany Pollack.

JUROR: Yes.

LAW CLERK: Six, Margaret McEvily.

JUROR: Yes.

LAW CLERK: Seven, Jessica Valdez.

JUROR: Yes.

LAW CLERK: Eight, Jose Corneil.

JUROR: Yes.

LAW CLERK: Nine, Keith Wynne.

JUROR: Yes.

LAW CLERK: Ten, John Mell.

JUROR: Yes.

LAW CLERK: Eleven, Rachel Goldstein.

JUROR: Yes.

LAW CLERK: Twelve, Michelle Honor.

JUROR: Yes.

THE COURT: Members of the jury, you heard your

verdict as it now stands recorded. The jury has been polled and the verdict is unanimous. The clerk will file and record the verdict.

Do either counsel object to the discharging of the jury in case number 18 CR 0872?

MS. TARLOW: No, your Honor.

MR. MARGULIS-OHNUMA: No, your Honor.

THE COURT: Ladies and gentlemen of the jury, you have completed your duty as jurors in this case. Before I discharge you, I have just a few brief comments to make.

You have just performed one of the most important activities of being a United States citizen. As you know, our system of government is divided into three branches, the executive, legislative and the judicial branches. As a citizen in most cases, your only participation in the executive branch of government is when you cast your vote for President. In the legislative branch, you vote for your senators and members of Congress who represent your interests. But your participation as jurors in the judicial branch goes to the very heart of making our judicial system work and making it one of the most successful and fair systems in the world. So you could see the importance of the task you just completed for all of us, the Court, lawyers and the parties. We thank you for having performed your duty in an exemplary fashion.

The clerk will escort the jury from the jury box.

Please collect your belongings and return the copies of the exhibits and the notebooks to the clerk. You are excused. However, I would like to speak to you just to thank you in private in the jury room in a moment. I would appreciate if you just wait for a minute in the jury room. Thank you again.

(Jury excused)

THE COURT: If the parties would just wait a few moments while I thank the jurors individually. I will also ask them whether they have any interest in talking to the parties. Some do, some jurors do, and some don't. And if they do, you may or may not wish to chat with them briefly, and when I come back, we'll also talk about scheduling a date for sentencing.

MS. TARLOW: Thank you.

MR. MARGULIS-OHNUMA: Thank you.

(Recess taken)

THE COURT: The jurors indicated they would wish to talk to counsel, if they wish to do so.

Let's look at the calendar for a date sometime 90 to 120 days out.

LAW CLERK: Friday, November 1st, at 4:00 p.m.

MR. MARGULIS-OHNUMA: That's fine for the defense, your Honor.

MS. TARLOW: Fine for the government.

THE COURT: The Court will order production of the presentencing memoranda. So thank you again for having been

very cooperative and professional in your representation of your respective clients which made it possible for the Court to conclude the trial within the time frame that we had set out. So thank you very much again.

MR. MARGULIS-OHNUMA: Judge, may I make one application, if I may?

THE COURT: Yes.

MR. MARGULIS-OHNUMA: I request an extension of the time to file motions pursuant to Rule 29 and Rule 33. I would like to take 90 days. I know that's a lot. I have another trial in the middle there in August.

THE COURT: Rather than entertaining more motion papers in this case, if you wish to make an oral application, I will schedule a hearing and you make your presentation orally. I don't think that any more extensive paperwork in terms of formal motions is warranted. If you wish, I can schedule a hearing.

MR. MARGULIS-OHNUMA: I think that makes sense, and then we'll request to brief it if you need it after the hearing.

To identify the motions would be about 30 days.

THE COURT: Let's set a date for such a hearing.

LAW CLERK: Friday, August 16, at 4:30.

MR. MARGULIS-OHNUMA: Thank you.

MS. TARLOW: That's fine for the government, your

Honor.

THE COURT: Thank you very much.

MS. TARLOW: Thank you, your Honor.

MR. MARGULIS-OHNUMA: Thank you, Judge.

(Trial concluded)